Nadler Speaks Out on Need to Restore Access to U.S. Courts

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WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (D-NY), Chair of the Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, testified on the pressing need to restore pleading standards which allow reasonable access to federal courts. At a hearing of the Judiciary Subcommittee on Courts and Competition Policy, Nadler urged his colleagues to pass H.R. 4115, the Open Access to Courts Act of 2009, a bill he introduced last month, along with Rep. Hank Johnson (D-GA) and Judiciary Chairman John Conyers, Jr. (D-MI), in order to address the Supreme Court’s Ashcroft v. Iqbal decision, which has led to the premature dismissal of numerous civil rights, environmental and consumer protection cases.

On May 18, 2009, the United States Supreme Court rendered a decision in Ashcroft v. Iqbal that abandoned more than half a century of established law, leading to the dismissal of numerous civil rights, environmental and consumer protection cases. Prior to the Iqbal decision, to get into court, a plaintiff was required to provide a “short and plain statement of the claim showing that the pleader is entitled to relief.” The new rule announced in the Iqbal decision requires judges to make a subjective determination, in the absence of evidence, of the “plausibility” of facts articulated in a complaint. It is a determination that the Supreme Courts says “requires the reviewing court to draw on its judicial experience and common sense.” Unfortunately, evidence of wrongdoing is often in the hands of the defendants, and the facts necessary to prove a valid claim can only be ascertained through discovery.

“The Iqbal decision overturned 50 years of precedent and will effectively slam shut the courthouse door on legitimate plaintiffs based on a judge’s subjective take on the plausibility of a claim, rather than on the actual evidence,” said Nadler. “What is really significant about the Iqbal decision is that it sets up a very stringent new standard that prevents people from having their day in court. Rights without remedies are no rights at all. All Americans are entitled to have access to the courts so that their claims can be heard, the evidence weighed, and their rights can be vindicated.”

The Open Access to Courts Act of 2009 will restore the standard set by Conley v. Gibson. This return to settled procedural law will ensure that all have an opportunity to enforce their rights in court. The legislation is supported by a diverse coalition that includes the Leadership Conference on Civil Rights, Christian Trial Lawyer’s Association, Sierra Club, and the National Senior Citizens Law Center.

The following is the text of Nadler’s full testimony, as written:

“Chairman Johnson, Ranking Member Coble, and other distinguished Members of the Subcommittee on Courts and Competition Policy, thank you for holding today’s hearing on H.R. 4115, the Open Access to Courts Act, which I introduced with Chairman Johnson and Chairman Conyers on November 19th.

“The Supreme Court’s decision in Ashcroft v. Iqbal was the subject of a hearing I chaired in the Subcommittee on the Constitution, Civil Rights and Civil Liberties on October 26th entitled ‘Access to Justice Denied: Ashcroft v. Iqbal.’ It is the legislative response to that hearing’s findings that brings us here today.

“What is really significant about the Iqbal decision is that it sets up a very stringent new standard that prevents people from having their day in court. It does so, not based on the evidence, or on the law, but on the judge’s own subjective criteria.

“Rights without remedies are no rights at all. All Americans are entitled to have access to the courts so that their claims can be heard, the evidence weighed, and their rights can be vindicated. Without recourse to the courts, our rights are merely words on paper.

“In Iqbal, the Court established a new test that federal judges must use when ascertaining whether civil complaints will withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Rather than questioning, as required under Rule 8(a)(2), only that the plaintiff had included a ‘short and plain statement of the claim showing that the pleader is entitled to relief,’ it dismissed the case, not on the merits, or on the law, but on the bald assertion that the claim was not ‘plausible.’

“In the past, the rule had been, as the Supreme Court stated in Conley v. Gibson, that the pleading rules exist to ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests’ not as a substantive bar to consideration of the case. Now the Court has required that, prior to discovery, courts must somehow assess the ‘plausibility’ of the claim, dismissing claims the court finds not ‘plausible’ – before discovery, and without submission of evidence.

“This rule will reward defendants who succeed in concealing evidence of wrongdoing, since claims will be dismissed before discovery can proceed, whether it is government officials who violate people’s rights, polluters who poison the drinking water, or employers who engage in blatant discrimination. Often evidence of wrongdoing is in the hands of the defendants, and the facts necessary to prove a valid claim can only be ascertained through discovery.

“The Iqbal decision overturned 50 years of precedent and will effectively slam shut the courthouse door on legitimate plaintiffs based on the judge’s subjective take on the plausibility of a claim rather than on the actual evidence.

“At our hearing on Ashcroft v. Iqbal, we heard compelling testimony from our witnesses that the Iqbal decision has resulted in a substantial departure from well-settled practice in civil litigation. Several witnesses said that the new standard put forward by the U.S. Supreme Court to decide a motion to dismiss a civil complaint amounts to a heightened pleading standard.

“Professor Arthur Miller of New York University School of Law, an expert on civil procedure, testified that, ‘what we have now is a far different model of civil procedure than the original design.’ We also heard from seasoned litigators. John Vail of the Center for Constitutional Litigation stated that there is ‘no doubt that the Supreme Court intended a sea change in pleading law.’ Debo Adegbile with the NAACP Legal Defense Fund referred to the Iqbal decision as a ‘judicially heightened pleading barrier erected by the Supreme Court.’

“These three witnesses agreed that a legislative response, like H.R. 4115, the Open Access to Courts Act, is necessary. In addition to our witnesses, a diverse coalition of 36 civil rights, consumer, environmental, and other organizations support a legislative response to Ashcroft v. Iqbal. Mr. Chairman, I ask that a copy of their letter be included in the record following my testimony.

“H.R. 4115 would restore the notice pleading standard that existed prior to Ashcroft v. Iqbal, a standard that was articulated over fifty years ago in Conley v. Gibson. Using the language in Conley, the Open Access to Courts Act provides that a complaint under Rule 12(b)(6), (c), or (e) cannot be denied “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.”

“That was the correct and workable standard for a half-century. It is well understood and practical. The Open Access to Courts Act would restore that time-tested standard.

“Again, I thank you, Mr. Chairman, for holding today’s hearing, and for your leadership on this issue. I look forward to working with you to restore the rights of all Americans by enacting H.R. 4115, the Open Access to Courts Act.”